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SCHOOL LAW UPDATE

1. LEGISLATION ON NEW CHOICES: CHARTERS, VOUCHERS, AND ON-LINE SCHOOLS.

1.1 Charters. New legislation amended the Charter Act to eliminate the ability of a district to impose a moratorium on new charter schools and created a State Charter School Institute as an independent agency of the CDE to authorize charter schools within school districts. Allowed concurrent or exclusive jurisdiction of local school districts over charters.

1.2 Vouchers. The Colorado voucher statute that was passed during the 2003 legislative session was ruled unconstitutional. Other similar voucher legislation has met with mixed success under various state court challenges. One bill introduced in the 2004 Colorado legislative session was modeled after the Florida voucher statute, but did not pass. The Florida statute was also recently declared unconstitutional. Issue is using tax dollars to support parochial schools.

1.3 On-line schools. On-line schools can be established by school districts or charter schools, and on-line school receives pupil funding for enrolled students (thus robbing local district of those funds). Law and regs are sketchy at best as to details, but statute does allow the District to charge for courses taken at traditional school by students enrolled in an on-line school.

2. LEGISLATION ON EMPLOYMENT ISSUES.

2.1 No pay. Amendment to teacher dismissal procedures now prohibits the payment of salary to a teacher who is criminally charged with any offense for which teaching license, certificate, etc. can be revoked, denied, or annulled. If not convicted and the teacher has not been dismissed, the teacher is reinstated with back pay (including benefits) within 10 days.

2.2 Administrators' Experience. New statute allows a board to give an administrator (who returns to the classroom) full or partial credit on the salary schedule for the time spent as an administrator.

2.3 Teaching authorizations. Renews the teaching authorization statute and created new authorizations: technical education, speech-language pathology assistant, interpreter, literacy instruction, and temporary principal. Allows districts to establish alternative principal programs to enable non-educators to develop the skills to qualify for licensing as principals.

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3. NEW LEGISLATION ON STUDENT ISSUES.

3.1 I.D.E.A. Reauthorization and major amendments were postponed until after the election.

3.2 Parental consent. District employees cannot use a written statement (confession) by a student concerning an act alleged to have been committed by the student that would result in mandatory expulsion per statute (weapons, selling drugs, robbery, third degree assault) **UNLESS:**

3.2.1 statement is signed by the student AND parents/guardian; OR

3.2.2 a reasonable attempt was made to contact the parents/guardian to be present when student signs the statement; and

3.2.3 "reasonable attempt" is defined as the school calling each of the phone numbers the parents/guardians provide to the school and all of the phone numbers the student provides for reaching the parents/guardians; BUT

3.2.4 parents/guardian may waive this requirement in writing after full advisement of the student and parents/guardian of the student's rights PRIOR to the signing of the statement or admission; and

prohibition does NOT APPLY if the student makes any deliberate misrepresentations affecting the applicability of the requirements of this section and a school official, relying in good faith on such misrepresentation, obtains a signed statement that doesn't comply with statutory requirements of consent.

3.3 Pledge of Allegiance-Display of Flag issues. Statute amended to require schools to provide an opportunity each school day for students to recite the Pledge. Any person not wishing to participate shall be exempt and need not participate. [NOTE: Sec. 18-11-205, CRS, has been on the books for many years and provides: "Any person who displays any flag other than the flag of the United States of America or of the state of Colorado...upon any state, county municipal, or other public building or adjacent grounds...commits a class 1 petty offense." The statute expressly exempts the temporary display of any instructional or historical materials that are not affixed permanently to a public building. Sec. 27-2-108.5, CRS, requires the US flag to be displayed in each school classroom of this state. The flag display must conform to federal statutes (4 USC Sec. 7)]

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3.4 Participation in Activities. Amends current statute that allows student to participate in activities at neighboring school district if that activity is not offered in student's home district. Now allows participation even if the offering school district is not contiguous. The district may select at which school the student will participate.

3.5 Excused from Materials on Human Sexuality. Requires districts to provide parents/guardian with written notice and an outline of topics/materials to be used in a **planned** course on human sexuality to allow them to excuse their child. Requires policies and instructions to teachers to avoid embarrassing a student if he/she is excused from that portion of the curriculum. Does not apply to local comprehensive health education programs implemented pursuant to *Colorado Comprehensive Health Education Act*.

3.6 Nutritious Choices. By 2006-07 school year, 50% of all items in a school vending machine must meet acceptable nutritional standards.

4. SEX OFFENDER ISSUES.

4.1 Notification of Access to Sex Offender Registry. Beginning in 2003, each school district is required to provide parents with written notice about their rights to obtain information on registered sex offenders and the procedures necessary to obtain that information. Notification from the District is only regarding how to access the registry information and does not include notification of the registered offenders themselves. Only law enforcement agencies and CBI may provide registered sex offender information based upon certain criteria of the requestor.

4.2 Unlawful Sexual Behavior charges. When a juvenile between the ages of 12 and 18 has been charged with unlawful sexual behavior, the information of the charge is public; however, only the information may only be released from the investigative law enforcement agency, the agency filing the petition (i.e. the D.A.'s Office), and the court. The District is provided the information and may use it in carrying out its legal duties, but must keep the information confidential. The District's Board may use this information in suspension or expulsion proceedings before or after the conclusion of the juvenile proceedings.

4.3 Need to Know. When the District is provided information concerning a juvenile sex offender or a juvenile who has been charged with unlawful sexual behavior, the District should keep the information confidential and only release the information to school personnel with a "need to know" to avoid possible legal claims by the offender.

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5. DEVELOPING LEGAL ISSUES IN THE COURTS.

5.1 Increasing the level of due process in expulsions. Courts are gradually expanding student's right to a fair "hearing" before the expelling officer. Have not ruled that student has right to confrontation of accusing witnesses, but courts will look at the "totality of the circumstances" to see if student was denied a meaningful opportunity to explain/refute.

5.2 Special education and burden of proof. For the past 25 years, school districts were forced to prove that their actions were correct or that they were providing FAPE. Now, the majority (one just ruled this summer) of the federal circuits (including the one in which Colo. lies) have ruled that the parents who are attacking the action/IEP/denial of FAPE in a due process hearing bear the burden of proof, not the district. Major legal impact.

5.3 No constitutional right to play sports. Courts are re-affirming that there is no federal constitutionally protected right to play sports in high school, and thus schools can impose reasonable rules and regulations governing participation.

5.4 Off-campus conduct that is rationally related to school concern may be punished. Courts are not retreating from the post-Columbine trend of allowing schools to reach out to off-campus conduct when there is a direct relation and effect on the school. Latest case: student expulsion was upheld by the courts even though the student's criminal prosecution for threatening to kill other students was dismissed for lack of evidence. Colorado standard: "behavior on or off school property that is detrimental to the welfare or safety of other pupils or of school personnel."

5.5 Never ever conduct a mass strip-search! Courts have repeatedly allowed suits for damages against principals who conduct mass strip-searches. If you don't have any individualized suspicion, then you don't have any reasonable cause to search. A search must be reasonable in its need and in its conduct. You need individualized suspicion and then must conduct it reasonably (avoid total strip searches).

5.6 "Must Know" or "Should have known?" Does a student have a right to be held to the same criminal law standard of intent ("knowingly") in an expulsion/suspension, or is "should have known" the correct standard? Tenth Circuit sidestepped the issue and ruled that "should have known" standard is reasonable and acceptable without getting to the issue of whether the constitutional requirement of due process requires a higher level of intent before a right (to attend school) is deprived (through expulsions/suspension).

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5.7 Hazing: an old tradition gone terribly wrong. No more “boys will be boys.” Courts nationwide are ruling hazing as criminal assaults, often allow civil suits against the coaches and/or administrators who encourage, tolerate or turn their backs on hazing, and serious incidents are attracting national attention. In Colorado, hazing is illegal (class 3 misdemeanor) and is defined as “any activity by which a person recklessly endangers the health or safety of, or causes a risk of bodily injury to, an individual for purposes of initiation or admission into or affiliation with any student organization.” Includes: forced and prolonged physical activity, forced consumption of food, beverage, medication or anything not intended for human consumption; and prolonged deprivation of sleep, food, or drink.

5.8 Administrator-led prayer at staff meetings unconstitutional. A federal court ruled that an Arkansas superintendent’s leading his staff in Christian prayer before mandatory training sessions was unconstitutional. Court rejected district’s argument that the “free exercise” clause outweighed the “establishment clause.” Court noted that when it is government-led prayer at a mandatory meeting, it excessively entangles the government into an endorsement of religion, whereas individuals may exercise their religious beliefs free of governmental interference/coercion if that exercise does not interfere with school operations or “convey the impression that government is endorsing” that religion.

5.9 The Problem of the 18 Year Old Senior. Under FERPA, once a student turns 18, he/she has control over student records, not the parents. But student still remains subject to the parent’s control over other school issues (e.g., need parental signed permission for absences) if the student is living at home. FERPA only applies to records, not to any other legal issues.